



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: APRIL 27, 2023

IN THE MATTER OF:

Appeal Board No. 628079

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective February 18, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by THE NEW YORK FOUNDLING prior to February 18, 2022, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed February 9, 2023 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted by the claimant.

Our review of the record reveals that the case should be remanded to hold a further hearing. On appeal, the employer has indicated that the employer failed to appear and to participate at the last hearing because of difficulty with its telephone lines and the telephone numbers provided to the Administrative Law Judge. In the interest of justice, the Board has determined to provide the employer another opportunity to appear and testify in this matter.

At the further hearing, the employer should produce Ryan Rhatigan, human resource officer. Mr. Rhatigan will testify about all conversations had with

the claimant and the employer's witness Richard Dunn as to the incident of February 17, 2022, and thereafter. Mr. Rhatigan will also provide additional testimony and evidence as to all other interviews done with coworkers, clients, and/or Faith Etumah as to the incident of February 17, 2022, as part of the investigation. This witness will offer additional testimony and evidence to explain the reason for the time delay between suspension and discharge and what the claimant was told as to his employment status of February 17, 2022, and thereafter. This witness will produce all documentation relevant to such testimony, including but not limited to witness interviews, witness statements, internal notation, summaries, letters, or emails, for entrance into the record after an opportunity for confrontation and comment.

The employer is directed to review the hearing transcript of February 6, 2023, in advance, and be prepared to cross-examine the claimant as to all previous testimony.

The Administrative Law Judge will take all additional testimony and evidence necessary to complete the hearing.

Now, based on all the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER